

Article

Moral theological analysis of direct versus indirect abortion

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*Cases of a vital conflict, where the lives of both the mother and child are at risk during pregnancy, have been the subject of recent vigorous debate. The basic principles put forth in the Ethical and Religious Directives are reviewed, as is the principle of double effect. An illustrative case of severe cardiomyopathy in a pregnant woman is described and it is noted that the principle of double effect would not apply. Counter arguments are noted, focusing on Martin Rhonheimer who posits that in the case of vital conflicts, such as performing a craniotomy on a baby stuck in the birth canal, taking the baby's life does not constitute a direct abortion because moral norms do not apply in the extreme conflict situation where both mother and child will die. He states that the death of the fetus is not intentional in these cases. He overlooks "how the life is being saved" and that a choice has been made, which implies a moral act, not just a physical one. Rhonheimer wants to make his moral judgment solely on the basis of intention, prescind from what actually occurs in the physical world of cause and effect. This is clearly against the teaching in *Evangelium vitae*. Ethics deal with the deliberate chosen actions in space and time of embodied human beings; it deals inescapably with material actions, with specifications of intentions. Rhonheimer states, "a killing or an abortion is 'direct,' not because the death of the fetus is caused in some physically direct way, but because it is willed as the means to an end." However the death of the child cannot be excluded from the act and is therefore of necessity included in it. What the acting person chooses includes what happens physically in this act. If the action theory proposed by Rhonheimer is accepted, it could be very difficult to avoid death-dealing actions from taking place in Catholic hospitals.*

Summary: This is a moral analysis of cases of "vital conflicts," where the lives of both the mother and child are at risk during a pregnancy. It is stated by some ethicists that directly killing the baby to save the life of the mother is morally justified, even when the direct action of the doctor is to kill the baby. Examples are provided to illustrate how Catholic moral principles apply. It is concluded that direct killing, regardless of the intention, is not justified. The doctor should always work to try and save the lives of both the mother and the child. One should never be directly killed even if the intention is to save the life of the other.

Keywords: Direct abortion, Vital conflicts, Ethical and religious directives, Principle of double effect, Pregnancy, *Evangelium vitae*

INTRODUCTION

The largest nongovernmental provider of health care in the United States is the Catholic Church. The bishops of the

Church provide moral guidance to this vast ministry through their *Ethical and Religious Directives for Catholic Health Care Services* (USCCB 2009). The *Directives* are a succinct and clear presentation

of the Catholic moral tradition in the area of health care and of its proper application in specific circumstances.

Through this document the bishops provide not only clear directives but also the rationale behind them; grounding all the directives is a commitment to protecting and advancing respect for human dignity. We read in the Introduction to Part I of the *Ethical and Religious Directives*:

The Catholic health care ministry is rooted in a commitment to promote and defend human dignity; this is the foundation of its concern to respect the sacredness of every human life from the moment of conception until natural death. (USCCB 2009, 10)

The bishops continue: “The moral teachings that we profess here flow principally from the natural law, understood in the light of the revelation Christ has entrusted to his Church” (USCCB 2009, 4). Because of the Church’s acceptance of, and insights into, the natural moral law it has always been able to articulate moral norms that are universally applicable. It was that intellectual tradition that led St. John Paul II to write of “the intrinsic and undeniable ethical dimension of the health-care profession, something already recognized by the ancient and still relevant Hippocratic Oath, which requires every doctor to commit himself to absolute respect for human life and its sacredness” (John Paul II 1995, no. 89). With his insights into the natural law Hippocrates rejected the practices of euthanasia, physician-assisted suicide and abortion. “I will give no woman a pessary to induce an abortion. I will give no one a deadly poison even if asked nor counsel any such thing.”

One of the *Ethical and Religious Directives* that seeks to affirm and protect the inviolability of innocent human life is number 45, which forbids any performance of a direct abortion. “Abortion (that is, the directly intended termination of pregnancy before

viability or the directly intended destruction of a viable fetus) is never permitted. Every procedure whose sole immediate effect is the termination of pregnancy before viability is an abortion ...” (USCCB 2009, dir. 45).

Directive 47 addresses that which has generally been referred to as an indirect abortion and that might be judged to be morally licit depending on the circumstances:

Operations, treatments, and medications that have as their direct purpose the cure of a proportionately serious pathological condition of a pregnant woman are permitted when they cannot be safely postponed until the unborn child is viable, even if they will result in the death of the unborn child. (USCCB 2009, dir. 47)

The term “indirect” is not used in the *Ethical and Religious Directives* but often appears in moral theology texts and in commentaries on the *Directives* as referring to the foreseen but not intended bad effect of a good action that is willed and performed. The principle of double effect is usually invoked when addressing the issues to which the term “indirect” is applied. It helps the moral agent avoid ever doing evil in order to achieve a good end.

THE PRINCIPLE OF DOUBLE EFFECT

Traditionally understood, the principle of double effect provides guidance in response to the following question. May I perform an action when I see that it will have two effects, one good and one bad? The answer is yes, if four conditions are met.

1. The act itself must be good.
2. All one intends is the good effect, not the foreseen but unintended bad effect.

3. The bad effect is not the means to the good effect. Otherwise one would be doing evil in order to achieve a good.
4. The proportion of the intended good must be greater than, or proportionate to, the foreseen but unintended evil effect.

The types of cases presented to illustrate the principle of double effect and to explain a direct abortion in contrast to what is sometimes called an indirect abortion are quite familiar. An example of a so-called indirect abortion would be the case of a pregnant woman who is suffering from uterine cancer. The cancerous uterus must be removed to save the life of the mother even though it is foreseen that the child will die. Such an intervention would be permitted by the principle of double effect.

First, the act itself is good, that is, the removal of the cancerous organ. Second, all one intends is the removal of the pathology not the death of the child, which is nonetheless foreseen. Third, the life of the woman is not saved by the death of the child but rather by the removal of the pathology. And, finally, as tragic as the situation is, there is a proportionately grave reason to proceed with the removal of the pathology even though one foresees the death of the child. Such an intervention would fulfill the conditions laid out in directive 47. "Operations, treatments, and medications that have as their direct purpose the cure of a proportionately serious pathological condition of a pregnant woman are permitted when they cannot be safely postponed until the unborn child is viable, even if they will result in the death of the unborn child" (USCCB 2009, dir. 47)

THE CASE OF CARDIOMYOPATHY

The type of situation that would not seem to be covered by this directive is the following. A pregnant woman is suffering

from cardio-myopathy. The continued pregnancy is putting her health, and perhaps even her life, in jeopardy because of the increase in blood pressure and the strain on her heart. In this case, the direct killing of the child to terminate the pregnancy would not meet the conditions of directive 45 or the principle of double effect. In the case of the cancerous uterus, the hysterectomy has as its "direct purpose the cure of a ... serious pathological condition of a pregnant woman" (USCCB 2009, dir. 45). In the case of cardio-myopathy, however, the abortion would not cure a serious pathological condition of the woman. The abortion would do nothing to cure the cardio-myopathy, which would persist but would indeed be less aggravated after the abortion. Also, the abortion would violate directive 45 which does not permit "the directly intended termination of pregnancy before viability" (USCCB 2009, dir. 45). The procedure would have as its sole "immediate effect ... the termination of pregnancy before viability" (USCCB 2009, dir. 45).

The removal of the child by dilation/curettage would not meet the conditions of the principle of double effect. First, as indicated, the act itself could not be seen as morally licit. The dismemberment of the fetus would constitute a direct, deadly assault on the life of the child. Admittedly, it would be done for a good reason, but it would still constitute the direct, intentional killing of an innocent human being. Second, the procedure, the dismemberment of the fetus, can have no other immediate effect than the death of the child. Therefore, the death of the child is not simply foreseen but intentionally and directly brought about. Third, the unavoidable death of the child resulting from the procedure is the means by which the mother is saved. In this case, evil would be done that good might come from it. Since all conditions of the

principle of double effect must be met, the condition of proportionality cannot even be invoked. In fact, it can be said that since the first condition is not met, because the act itself is not a morally good act, the principle of double effect cannot even be applied. The act being performed can be understood as a “direct” abortion because it is an unmediated death-dealing action taken against an innocent unborn child.

WHAT IS A DIRECT ABORTION?

However, there has been a debate within moral theological and philosophical circles for several decades regarding what precisely is meant by term “direct” when referring to an abortion procedure. The discussion presented in the previous sections can be termed the magisterial understanding of direct abortion. There have been Catholic scholars, however, who are all generally considered to be faithful to the magisterial teachings of the Catholic Church and yet differ from it on this point.

Professor German Grisez of Mount St. Mary’s University was probably one of the first to attempt a reformulation of the traditional understanding of what was meant by “direct” in the prohibition of procured abortions. He did so by reflecting on a craniotomy, which had to be performed to save the life of the mother if the child had become lodged in the birth canal during delivery. If the procedure were not performed, both mother and child would die. If the procedure were done, the child would die. His addressing this case was largely philosophical in terms of his “action theory” as craniotomies simply are no longer done (Grisez 1970). He and his collaborators, highly regarded Catholic scholars such as Joseph Boyle at the University of Toronto, John Finnis at Oxford, and Robert George at

Princeton, acknowledge that the Church has forbidden the intentional killing of the innocent in any and all circumstances and acknowledge that a craniotomy would have been referred to traditionally as a “direct abortion.” But they want to present their own understanding of what should be understood as the position of the Church when it forbids the direct killing of the innocent in any and all circumstances (Finnis, Grisez, and Boyle 2001).

VITAL CONFLICTS:

FATHER MARTIN RHONHEIMER

Another author who has dealt extensively with this question is Father Martin Rhonheimer, a Swiss priest of the Prelature of Opus Dei who had taught at Santa Croce, the Opus Dei University in Rome. Even though Grisez et al. (Finnis, Grisez, and Boyle 2001) were the first to formulate a moral approach that would permit a craniotomy, I will not discuss their proposal for lack of space. I will instead concentrate on Rhonheimer since he has more recently written on the topic and approaches the issue somewhat differently (Rhonheimer 2009b).¹

Rhonheimer is a very prolific writer and something of a controversialist. But, he is also a very thorough and careful scholar. One of the difficulties of entering into academic debate is that the scholar being critiqued often claims that one or another of his more fundamental or more recent writings actually addresses the criticisms raised. As Rhonheimer is so prolific, I must simply settle on one of his works dealing specifically with this issue. It is titled *Vital Conflicts in Medical Ethics: A Virtue Approach to Craniotomy and Tubal Pregnancies* and was published in 2009 (Rhonheimer 2009b). Rhonheimer argues for the moral legitimacy of craniotomy to save the life of the mother and insists that it would not constitute a “direct abortion.” Rhonheimer must attempt to make the case

that the craniotomy or the dismemberment of a fetus through a dilation/curettage is not a “direct abortion” if he wants to write as a faithful Catholic, as the Church has repeatedly and solemnly taught that a direct abortion is never morally licit. This can be seen, for example, in the encyclical of St. John Paul II, *Evangelium vitae*, “the direct and voluntary killing of an innocent human being is always gravely immoral” (John Paul II 1995, no. 57.4) and “procured abortion by whatever means it is carried out is the deliberate and direct killing ... of a human being” (John Paul II 1995, no. 58.2).

It should be said at the outset that Rhonheimer would argue for the legitimacy of the killing of the unborn child only in the very rare situation in which both the mother and the child will assuredly die if there is no intervention. The only intervention that would appear at all reasonable to Rhonheimer would be removing the child so that the mother can live. There obviously is no option of a procedure that would allow the baby to live by taking the life of the mother. As a result, Rhonheimer argues for the moral legitimacy of a medical intervention that would at least allow the only one with a chance of surviving to survive. But, this is accomplished by killing the child.

Rhonheimer would not advocate the performance of an abortion even to save the life of the mother if there were a chance that mother *or* child would survive because this would involve the illicit weighing of the value of one life over against the other and the judgment that one life is worth attempting to preserve and the other is not. Rhonheimer writes:

Weighing the lives of mother and child against each other involves the prospect of a conscious decision against the life of the child: the child could live, but his life is destroyed as the consequence of the weighing and a preference for the life of the mother. It is precisely this kind of

weighing that is morally illicit....” (Rhonheimer 2009b, 7)

Rhonheimer maintains his position is fully faithful to authentic Catholic teaching.

In no way will I question the decisive fundamental insights of traditional moral theology, much less depart from the continuity of the tradition of Catholic teaching that the direct killing of an innocent human being—and therefore direct and deliberate abortion—is never permitted. (Rhonheimer 2009b, 9–10)

He will, however, argue that bringing about the death of the child by crushing the child’s skull or by dismembering it without the mediation of any therapeutic act, such as a hysterectomy or chemotherapy, does not constitute a direct abortion because moral norms do not apply in the extreme conflict situation where both mother and child will die.

THE CASE OF CRANIOTOMY

The subtitle of his book is *A Virtue Approach to Craniotomy*. The virtue to which Rhonheimer appeals in his book is that of justice. He writes:

Only within the ethical context of ‘justice’ ... does it make any sense to speak in a morally relevant way of ‘direct killing’ ... Viewed purely as the physical (violent) causing of the death of a human being, however ‘direct’ a killing may be, it cannot be evaluated morally; on this level the term ‘direct’ has no morally relevant meaning whatsoever. Any deliberate causing of the death of a human being becomes a moral issue only by the act that the agent, by his choice of an act of killing, has entered into a relation with the person killed that is characterized by the principle of justice. (Rhonheimer 2009b, 12)

Rhonheimer goes on to argue that the concept of injustice that is at the foundation

of the prohibition of directly killing the innocent is simply incomprehensible in the extreme cases where both mother and child will die without an intervention. With an intervention, at least one will survive, the mother. The child will in any event, die. The killing of the unborn, he writes, falls outside the opposition of just or unjust and “can be described as an act of saving a life” (Rhonheimer 2009b, 13). A life is indeed being saved; but, by what means? Rhonheimer claims it is achieved through the destruction of the child but the child’s death is not what is being chosen. He writes: “The medical intervention that causes the death is therefore to be seen as analogous to an unintended side effect, i.e., analogous to causing death unintentionally (*praeter intentionem*)” (Rhonheimer 2009b, 13).

The Holy See had of course specifically addressed the morality of a craniotomy in the nineteenth century. A decision was issued by the Holy Office in 1884 and approved by the pope and confirmed in 1889 that read as follows: “It cannot be taught with certainty in Catholic schools that the surgical operation called ‘craniotomy’ is permitted ...” (Denzinger 1889, no. 3258).² However, Rhonheimer claims that there have been advances in moral theory since then and that the Congregation for the Doctrine of the Faith, the same dicastery that issued the rulings in 1884 and 1889, had encouraged him to write on the topic and to open it to discussion among Catholic scholars. As he carries out this task with careful scholarship, Rhonheimer will, at times, obscure the actual issues under discussion by a facile use of language. Consider the following passage. In cases in which both mother and child will die,

not performing an intervention that results in death for the child but would save the mother would mean that mother

and child would be allowed to die and thus *no* life would be saved. To consider it a moral duty to abstain from saving the savable life of the mother seems irreconcilable with a proper medical ethos. Nor could one justify ethically a norm that declared it obligatory to abstain from such life saving interventions. (Rhonheimer 2009b, 19)

In this passage Rhonheimer already declares that the position of refraining from an action that will result in the death of the child, without any other mediating act, is “irreconcilable with a proper medical ethos.” And, he claims that one could not even justify ethically the position that one would *not* take the life of the innocent child. As a result, he here begs the question.

Rhonheimer speaks of abstaining “from such lifesaving interventions” without stating that the lifesaving intervention he is advocating in this passage is suctioning out the brains and crushing the skull of the unborn child. Removing the cancerous uterus from a pregnant woman is also a “life saving intervention,” but one that is incontestably morally licit as the moral act being performed is the surgical removal of a pathological organ. Therefore, he is at times ambiguous in the language he uses to advance his argument.

Rhonheimer wants to reduce the emptying and crushing of the skull of the unborn child to merely a physical event. Craniotomy “does not contradict justice,” he writes:

and this can be done only because and insofar as the intervention falls outside the ethical context of ‘justice’ and, for this reason, can be treated as a physical event. Only on this basis—when the intervention is considered, as it were, as its material substrate—can the action then be described as an act of saving a life and consequently as a just act. (Rhonheimer 2009b, 22)

Rhonheimer overlooks several important points. First, the issue again is not

“saving a life” but *how* the life is being saved. Second, once there has been deliberation, and a choice has been made, and the will has been engaged, one is no longer speaking of a physical event or a material substrate but of a moral act. It is not at all clear by Rhonheimer’s reasoning how a “material substrate” turns into a moral act, that is, a “just act.” And, how is an act that is the unmediated deprivation of an innocent human being of his or her life a “just act” particularly when justice is defined as rendering to each his due? (Pieper 1990).

Rhonheimer will, nonetheless, go on to insist that such an action is not a direct abortion, which has been condemned by the Church. He writes: “An action that admittedly causes the death of the fetus without, however, involving a decision to deprive the child of its life or the choice to kill it as a means to an end is not a ‘direct abortion’” (Rhonheimer 2009b, 32).

However, we find Rhonheimer is setting up a false dichotomy when he tries to explain this position. He writes:

There are cases in which someone chooses and carries out an action that does effect the death of a fetus—also as a more or less physically immediate or direct consequence of the completed action – but a decision against the life of the fetus is not the basis of the decision and action Rather a decision is made exclusively for something else—for example, the decision to remove a diseased organ or to save the life of the mother. (Rhonheimer 2009b, 33)

He goes on to say that if the fetus dies as a result of such an act, the effect is not “intentional”; it is “*praeter intentionem*,” that is, outside the intention.

He writes as though one were dealing with two different actions: “to remove a diseased organ” or “to save the life of the mother.” However, in the case of a

craniotomy, the act is directed against the fetus and not against a diseased organ. Although the death of the fetus resulting in an unmediated manner from the intervention is not “the basis of the decision and action,” it is impossible to exclude it from the chosen action. Also, Rhonheimer compares what cannot be compared with the conjunction “or.” He says the action resulting in the death of the child is undertaken *for* the removal of a diseased organ *or for* saving the life of the mother. But, it is to save the life of the mother that there is any intervention at all. The question is what is the means chosen to save the life of the mother? The means is the removal of a diseased organ, such as a cancerous uterus, *or* it is the killing and removal of the child. However, the choices are not “removing a diseased organ” *or* “saving the life of the mother.” It is “removing a diseased organ” or “killing an innocent human being” in order to save the life of the mother.

Rhonheimer wants to make his moral judgment solely on the basis of intention, prescind from what actually occurs in the physical world of cause and effect. He writes:

As we have stated, in connection with the formulations of [the encyclical] *Evangelium vitae*, the act of “direct killing” or “direct (procured) abortion” is defined as an “intentional action,” i.e., it is defined without reliance on physical categories and independent of those elements of acting that exist in the purely physical dimension of the act of killing. (Rhonheimer 2009b, 34)

This simply cannot be a correct interpretation of the encyclical. First of all, the encyclical does not speak of a “purely physical dimension” of killing. Second, how can one speak of direct killing without reliance on physical categories? The killing of another human being is not an abstraction. The encyclical does not make its negative moral

assessment of a particular kind of killing independently of “the purely physical dimension of the act of killing.” That is precisely what it does *not* do. Indeed, it specifies the kind of physical activity it is discussing as an abortion that is, of necessity, defined in physical as well as intentional terms.

Rhonheimer claims that the definition of procured or direct abortion in *Evangelium vitae* “stays on the purely intentional level,” which “means that the core elements of the definition were the concepts ‘deliberate decision’ (against a human life) and the decision for something as a ‘means’ or an ‘end.’” But, it seems that no moral norm can possibly stay on the purely intentional level. Ethics deal with the deliberate chosen actions in space and time of embodied human beings; it deals inescapably with material actions, with specifications of intentions, as the Hippocratic Oath does when it repudiates abortion and euthanasia.

Rhonheimer writes:

The lack of clarity of the concept “indirect” leads to the attempt to clarify it by ultimately interpreting “indirect” in physical categories: the concept is analyzed in terms of whether and to what extent the effect originates physically-causally from the action, which itself is interpreted in a physical way. (Rhonheimer 2009b, 34)

Of course, one cannot make moral judgments solely on the basis of what is occurring physically. Intention and circumstances also enter into the determination of a moral act. However, how could one possibly pass a moral judgment on a human action without taking the physical realities and cause and effect into account?

Rhonheimer continues to confuse the moral issues by the way in which he formulates them. For example, he writes: “a doctor who performs a hysterectomy on a pregnant woman with uterine cancer

thereby killing the fetus, would be able to claim that he only wanted to save the mother; he did not want the fetus to die” (Rhonheimer 2009b, 37). However, this could be differently formulated to express more clearly what is happening: A doctor who performs a hysterectomy on a pregnant woman with uterine cancer, thereby foreseeing that the child will die, would be able to claim that he only wanted to save the mother by removing the pathological organ; he did not want the fetus to die.

Here is another example of the formulation of a moral dilemma but without moral clarity. Rhonheimer writes:

The question in an extreme case of vital conflict is whether actions like craniotomy or salpingectomy themselves are morally correct or not, and whether, based on their object, they are an act of killing, or purely a matter of saving a life or of therapy for a disease. (Rhonheimer 2009b, 40)

But clearly a craniotomy is not a “therapy for a disease.” It is surely undertaken to save a life; however, what is the means chosen to save the life? It is the crushing of the skull of the infant. Rhonheimer appears to line up three different moral objects: killing, saving a life, and therapy for a disease. But “killing” without further qualification is not a moral act at all but a description of a purely physical act. “Saving a life” refers to the ultimate end of our action and to our intention, but it does not identify the means chosen to save a life.

Rhonheimer states that the killing of the infant through a craniotomy is

the unwilling consequence of an act that is good in itself—saving the life that can be saved—and perhaps even required. Therefore, the killing should be called non-intentional because it cannot even determine the act on the level of object, since it is not intended. (Rhonheimer 2009b, 40)

However, this begs the question again, because he simply declares the craniotomy to be an act good in itself because it saves the life that can be saved.

Rhonheimer writes that “a killing or an abortion is ‘direct,’ not because the death of the fetus is caused in some physically direct way, but because it is willed as the means to an end” (Rhonheimer 2009b, 40). He says the craniotomy is not a direct abortion because the death of the child is not willed as a means to an end; however, that is precisely what is chosen. To be sure, one does not want the death of the child. However, as stated previously, the death of the child cannot be excluded in the decision to perform a craniotomy and is therefore of necessity included in it. “Changing the structure of the skull” of necessity incorporates “killing the child.” The removal of a cancerous uterus is directly therapeutic for the mother while the child’s death is foreseen but not willed. The removal of the child through a craniotomy is not therapeutic for the mother as it does not address the pathology of the mother.

Indeed, Rhonheimer says the child in the extreme case where both mother and child will die should be considered as already dead.

It would therefore seem ... plausible to say that the principle “do no harm” can no longer be applied meaningfully in this extreme case; in such a situation a doctor would consider a fetus that is still alive as already dead, given that not performing the operation, which would save the life of the mother, would result not only in the death of the mother but also that of the child. (Rhonheimer 2009b, 41n19)

Rhonheimer claims that the taking of the life of the child through a craniotomy is analogous to the child dying from a natural disaster.

What such an act has in common with a natural event is that natural events that cause death are not infringements of justice. A person who dies has suffered no injustice, as people who die as a result of an earthquake, or by an airplane crash do not suffer any injustice. If “killing” is merely a natural event, no injustice can be attributed to it (which does not, of course, imply the opposite, that it corresponds to justice). ... it is not a natural event but the circumstances allow the act of killing to be viewed as analogous to a natural event: it falls outside of the ethical context of “justice.” Which says in effect: where this ethical context (of justice) is no longer given, acts of killing can no longer be evaluated as “morally good” or “evil,” and this precisely for the reason that they can no longer be evaluated as just or unjust. (Rhonheimer 2009b, 44)

Rhonheimer appears to be saying that a chosen human action can be indifferent; that is, it can have no inherent moral character. However, this assumption simply does not comport with any moral theory developed and utilized by the magisterium. The act of the physician deliberating on and choosing a course of action to achieve an end by its nature must have a moral quality. What would be analogous to a natural catastrophe would be both mother and child dying from natural causes. But once a human action intervenes—directed by deliberation, choice and an engagement of the will—one no longer has simply a natural event (perhaps seen as an *actus hominis*) but rather indeed a moral act (*actus humanus*).

Since in Rhonheimer’s analysis a killing act can be judged to be moral or immoral (a direct killing of an innocent human person) only on the basis of whether it is just or unjust, and since the vital conflict in which both mother and child will die if nothing is done cannot be subjected to the criterion of justice, a craniotomy cannot be

viewed as an act of injustice and is therefore to be judged as moral. He writes:

an abortion is not direct if no decision has been made (on the level of means) to take the life of a child in order to ensure the survival of the mother. Whether this is the case or not is not decided by the structure of the physical act, but by the intentional structure.” (Rhonheimer 2009b, 47)

But surely both have to be taken into account. The intentional structure will manifest itself in the structure of the physical act, and the structure of the physical act may well not correspond to the articulated intentional structure.

Rhonheimer insists that moral objects must be described by verbs not nouns as we are dealing with human *actions*. He writes: “The ‘object’ of a craniotomy, therefore, is not simply the fetus” (Rhonheimer 2009b, 53). However, obviously, it is not simply the fetus. There is no one involved in this debate who would say the “object” of the craniotomy is simply the fetus. In fact, the sentence makes no sense. The topic under discussion is what is done to the fetus. Rhonheimer continues:

Even if the death of the fetus is caused immediately, in a physical sense, by the medical intervention, one can still pose this question: Is the object of the act the killing of the fetus with the purpose of saving the mother, or is the whole act to be viewed, regarding its object, as a life-saving medical intervention? (Rhonheimer 2009b, 53)

However, it seems clear that the moral object is the unmediated killing of an innocent human being, the fetus, in order to save the life of the mother. Rhonheimer says, “one must put oneself in the ‘perspective of the acting person’ and analyze precisely what is actually chosen on the level of the concrete act, and not simply analyze

what happens physically in this act.” However, that is precisely what is being done. What the acting person chooses includes what happens physically in this act, including the relationship of the persons involved in the action. What happens physically and morally is the unmediated suppression of the life of an innocent human being by the acting person.

Rhonheimer can hardly be called a dualist, of separating the spiritual from the physical aspects of the human person. However, one can hardly overlook what appears to be a dualism between the intentional and the physical in his analysis of the human act.

THE HYLOMORPHIC THEORY

The hylomorphic theory has been used for millennia by Christian and western thought to stress the inseparability of certain aspects of a given reality. This theory analyzes realities in terms of form and matter using concepts and terms that received their earliest articulation from Aristotle. Aristotle distinguished between the fact that something exists rather than not existing, that is, its *thatness*, from its existing as something unique from some other existing thing, that is, its *whatness*. The “thatness” of a thing he called *matter* and the “whatness” he called *form*. Form is not the shape of a thing according to the hylomorphic theory but rather what a thing is. The form and matter of any given reality can be distinguished but not separated. To stress the unity of the human person, body, and soul, St. Thomas Aquinas applied this hylomorphic theory, describing the body as the matter and the soul as the form. What makes a human being truly a human being is the inseparable unity between matter and form, body, and soul.

This theory can also be applied to human actions. There must be a unity to the action, which is determined both by its

physical character with all relevant factors and the intention of the actor. No one would descend, for example, merely to the physical properties of an act, such as sexual intercourse between human beings, without also incorporating into the physical property of the act relevant factors to identify the act even on the level of its physicality. Is the intercourse between two individuals of the same sex? Is the intercourse with another man's wife? Is the intercourse with a minor? Is the intercourse taking place between two single people? Is the intercourse taking place between a man and woman married to one another? In a fully deliberated and chosen act, the acting person will be performing an act of sodomy or adultery or statutory rape or fornication or marriage. Perhaps in each case the acting person will view his action as an expression of "love" of the other. It well may be that "from the perspective of the actor." However, that will not define the species of the act; it will not tell us what the man did to express his "love" for another.

To speak of an act of killing says nothing with respect to it as a human act (*actus humanus*), as a moral act. Other factors must be considered. Was the other an innocent person killed as a result of my unmediated assault upon his or her body that could have no other conceivable outcome than death? Or was the other a criminal killed as a result of the state's unmediated assault on his or her body which could have no other conceivable outcome than death? Was the other person posing a serious and immediate danger to me, killed as a result of my act of self-protection that could have no other conceivable outcome other than death? Obviously, we would be dealing with murder in one case, with retributive justice in the other, and with self-defense in the final case. However, the intention of the acting person takes into account the

morally relevant qualifiers before it is formulated and carried out in a physical act. As dreadful as the situation is where both mother and child will die if there is not an intervention directed at killing the child, the outcome of the chosen action from the perspective of the acting person cannot be described as comparable to an occurrence of nature that neither deliberates nor chooses but is, as it were, blind. Nor can the child lodged in the birth canal be viewed as if he or she was "as good as dead" nor can the action of the physician crushing its skull be compared to an earthquake.

Blessed John Henry Newman (Newman 1865) used very stark language to drive home the incomparable difference between a physical and a moral evil. They can in no way be compared. The moral evil involves the engagement of the will; the physical evil does not. The one is subject to moral censure; the other is not.

The Catholic Church holds it better for the sun and moon to drop from heaven, for the earth to fail, and for all the many millions on it to die of starvation in most extreme agony, as far as temporal affliction goes, than that one soul, I will not say, should be lost, but should commit one single venial sin, should tell one willful untruth, or should steal one poor farthing without excuse. (Newman 1995, 221)

Frankly, a debate over action theory and the meaning of "direct" and "indirect" has been going on for thirty years and during that time it was an interesting debate among highly respected theologians and philosophers. However, it is no longer a topic for debate among theoreticians. It may be that the magisterium of the Church will one day adopt a different understanding of the meaning of "direct," as in direct abortion, than the one that has guided it in the past. We have reached a point where the theories put forth by scholars such as Grisez and

Rhonheimer will be put into practice in Catholic healthcare facilities if it is not addressed by the magisterium.

If the action theory proposed by Rhonheimer is accepted, it could be very difficult to avoid death-dealing actions from taking place in Catholic hospitals. The following kinds of questions would have to be posed in order to direct clinical decision making in what might be perceived as a vital conflict. When can procedures that straightaway (in Grisez's words) kill a child through physical action against it in time and place be allowed? At how many weeks gestation? With what pathology of the mother? Pulmonary hypertension? Cardio-myopathy? How severe must the condition of the mother be, in order for a judgment to be made that both mother and child will die so as to justify an unmediated death-dealing act against the child? At what point would the condition of the mother have deteriorated to such a degree that the only course of action would be the dismemberment and removal of the baby? What procedures can be used to remove the child? D&C? Saline solution? Vacuum aspiration? The answers to those questions will result in actual protocols being adopted, put in place in Catholic hospitals, and, in the final analysis, put in practice.

The debate that has been taking place over action theory, the notion of intentionality and the meaning of "direct" and "indirect" is no longer taking place in the realm of the theoretical. It has entered most profoundly into the realm of the practical as can be seen in the defense by Theresa Lysaught of a medical intervention in a Catholic hospital in Phoenix that was judged to be a direct abortion. Lysaught defended the practice by appealing to the writings of Martin Rhonheimer (Lysaught 2011).

In the past, one could debate these matters and illustrate them with a procedure that simply never took place, a craniotomy. However, that is no longer the case. Appeals

are being made from highly regarded, orthodox Catholic scholars for a change in the traditional understanding of the principle of double effect and the understanding of what constitutes a "direct abortion." Critiques of these arguments arise as they are made. However, because of the urgency of the current situation, it seems the magisterium needs to settle the debate for the benefit of Catholic health care and those whom it serves.

NOTES

1. Extensive debate has taken place between Rhonheimer and the critics of his position on craniotomy and "direct" versus "indirect." Many of these have taken place in the pages of *The National Catholic Bioethics Quarterly*. I do not want to enter into those debates, but I do call the attention of the reader to them (Rhonheimer 2009a; Austriaco 2010; Guevin 2010; Rhonheimer 2011; Colloquy 2011; Colloquy 2012).
2. The first decision is found in SCUI (1884, 556).
3. References in this essay are to the *Origins* document, although it was originally published as "Moral Analysis of an Intervention Performed at St. Joseph's Hospital and Medical Center," 21, <http://www.commonwealmagazine.org/blog/wp-content/uploads/2010/12/St.-Josephs-Hospital-Analysis.pdf>.

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